

IP 05-0032-CR 1 H/F US v Horne
Judge David F. Hamilton

Signed on 4/18/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
HORNE, DEWAN ANTHONY,)	CAUSE NO. IP05-0032-CR-01-H/F
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CAUSE NO. IP 05-32-CR-1 H/F
v.)	
)	
DEWAN ANTHONY HORNE,)	
)	
Defendant.)	

ENTRY ON DEFENDANT'S MOTION TO REVOKE DETENTION ORDER

Defendant Dewan A. Horne has been indicted for his role in a scheme to carry out armed robberies by offering cars for sale on eBay.com and then luring prospective buyers with cash into the robberies. Count One charges that Horne conspired with others to interfere with commerce by threats or violence, in violation of 18 U.S.C. § 1951(a). Count Two alleges a substantive violation of interference with commerce by threats or violence, through a robbery committed on January 6, 2005. Count Three alleges that Horne aided and abetted the brandishing of a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) and 18 U.S.C. § 2.

On the government's motion, Magistrate Judge Foster ordered Horne detained before trial in a written entry dated January 25, 2005. On April 8, 2005, Horne moved for reconsideration of the issue pursuant to 18 U.S.C. § 3145(b).

The court held a hearing on April 12, 2005, which included evidence from both the defense and prosecution that was not before Judge Foster. The court has also reviewed the record before Judge Foster.

For the reasons explained in this entry, defendant Horne's motion is denied.

Discussion

This court considers the issue of detention *de novo*. *United States v. Jones*, 804 F. Supp. 1081, 1086 (S.D. Ind. 1992); see also *United States v. Torres*, 929 F.2d 291, 292 (7th Cir. 1991) (district judge required to read testimony before magistrate judge or to receive new testimony); *United States v. Maull*, 773 F.2d 1479, 1481-82 (8th Cir. 1985) (*en banc*) (history of Bail Reform Act supports requirement that district court should review detention order *de novo*). This entry states the court's findings of fact and conclusions of law in compliance with Fed. R. App. P. 9(a). See *United States v. Swanquist*, 125 F.3d 573, 575-76 (7th Cir. 1997) (noting need for prompt hearings and clear explanations of bail and detention decisions).

Detention is available in this case under 18 U.S.C. § 3142(f)(1) because the case involves charged crimes of violence, 18 U.S.C. §§ 924(c) and 1951(a), with maximum punishments of 10 years or more in prison. The indictment establishes probable cause to believe that Horne is guilty of the crimes. The parties agree that

the § 924(c) charge is sufficient to support the rebuttable presumption in favor of detention pursuant to 18 U.S.C. § 3142(e).

The issue is whether Horne has rebutted that presumption in favor of detention. The court must consider both the safety of the community and the risk of flight. The court finds that Horne has not rebutted the presumption in this case. The court's inquiry is guided by the factors set forth in 18 U.S.C. § 3142(g).

I. *§ 3142(g)(1) & (2) – Nature and Circumstances of the Offenses Charged, and the Weight of Evidence*

Horne is charged with conspiring with others to use eBay.com to lure prospective car buyers with substantial cash or readily negotiated cashier's checks into situations where they could be robbed at gunpoint. One robbery occurred on January 6, 2005. There is probable cause to believe that Horne was involved directly. According to evidence in the probable cause affidavit, which stands unrebutted, one of the gunmen told the victims to lie on the ground and then said: "If we shoot one, the other will tell us where the money is." Horne is not alleged to have been one of the masked gunmen; he is alleged to have arranged for the robbery and to have known that guns would be brandished.

A similar attempted robbery occurred on January 1, 2005. The intended victims escaped by fleeing after a gun was brandished. Although the record does not indicate at this point that Horne was present at the scene of the January 1st

attempted robbery, the allegations clearly place it within the overall conspiracy. The indictment also describes several other attempted transactions stemming from Horne's e-mail account. In those other transactions, prospective buyers became cautious and backed away before they could be robbed.

At this point, the evidence against Horne is substantial and unrebutted. Horne has not testified, and he has called no other witnesses concerning the charges. The allegations of the probable cause affidavit, complaint, and indictment have been corroborated in substantial part by one of the two gunmen. In separate statements to law enforcement, Horne and the gunman have each indicated that the other was the "brains" of the operation. The gunman has told agents that Horne knew of the expected and intended use of firearms.

II. § 3142(g)(3) – *Horne's History and Characteristics*

Section 3142(g)(3) instructs the court to consider the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings, as well as whether he was subject to any other criminal justice supervision at the time of the charged offense.

Horne is a citizen of the United States and has lived all his life in Indianapolis. He is 24 years old. At the time of his arrest, he was living

independently in an apartment. He is good mental health, though he has some physical illnesses — epilepsy, asthma, scoliosis, and a severe allergy to peanut butter. His parents are married to one another and have lived in the same home for 26 years. Horne would be welcome to reside there with his parents if the court released him pending trial. Horne had been using marijuana before his arrest.

Horne has significant computer skills. Beginning in January 2003 and until a few weeks before his arrest, he worked in several computer service jobs in Indianapolis. Horne has never been married. He has one child who lives with her mother in Indianapolis.

Horne's criminal history is relevant here. In 2003, he was convicted in state court of possession of drug paraphernalia as a Class A misdemeanor. He has several arrests for driving with a suspended license, and one for operating a vehicle while intoxicated. Most important, he was arrested on May 15, 2004 and was charged with possession of cocaine as a Class D felony. That charge remains pending. Horne had been released on his own recognizance on the cocaine charge at the time of the events described in the indictment.

III. § 3142(g)(4) – *Danger to Community and Risk of Flight*

The court finds that Horne has not rebutted the presumption that he should be detained prior to trial to protect the safety of the community. The government has come forward with substantial evidence that Horne participated in a highly

dangerous scheme of armed robberies. The evidence shows that he did so at a time when he was facing a felony cocaine charge and was under at least some degree of supervision by the state criminal courts. Even in the face of his second drug charge in the state courts, Horne went forward with the armed robbery scheme that used his computer skills to help lure the victims. In other words, when another court released him before trial, he responded to that degree of trust by proceeding with the dangerous armed robbery scheme. This evidence of disregard for the requirements of the law leads the court to believe that Horne cannot be trusted sufficiently to conform his conduct to law to allow his pretrial release. The judicial system should be expected to learn from experience. See *United States v. King*, 349 F.3d 964, 966 (7th Cir. 2003) (commenting it was “hard to understand” why bail was granted to a person who had been a fugitive for several years).

The question of flight is less clear. Horne has lifelong ties to Indianapolis, and he has no significant ties elsewhere. He also has no record of failing to appear in court when ordered to do so. He faces significant punishment that could lead him to attempt flight in this case, but the court does not base its decision on the asserted risk of flight. The danger to the community posed by Horne is sufficiently clear and convincing that the court finds his motion to revoke the pretrial detention order should be denied.

So ordered.

Date: April 18, 2005

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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